IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 770 OF 2004

Mahableshar Giristhan Municipal
Council, Mahableshwar ..Applicant

Vs.

Yusuph Mohammad Lakadawala and ors. ..Respondents

Mr. Ganesh Gole for applicant.
Mr. M.K. Kocharekar for respondent nos.1 to 3.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 28, 2007.

P.C.:

1. Heard Mr. Gole the learned counsel for the applicant - Municipal Council which seeks leave to appeal against the order of acquittal passed by the learned JMFC at Wai in Summary Criminal Case No.157 of 1997.

2. It was alleged by the Municipal Council that accused nos.1 to 4, the present respondent nos.1,2 and 3 had uprooted trees of various kinds between the period from 24/12/1996 to 5/6/1997 located in the land

bearing Survey No.202-B/22 and without permission of the Trees Officer of the Municipal Council and thus contravened the provisions of the Maharashtra (Urban Areas) Preservation of Trees Act, 1975.

3. The Municipal Council had examined Shri Mukund Katekar as PW 1 and he was holding the post of Tree Officer at the relevant time, whereas PW 2 Shri Sanjay Vishwanath Dasture was a panch witness. Photographs at Exhs.85 to 101 and report of the Tree Officer dated 5/6/1997 was at Exh.79. The written complaint filed by the complainant was at Exh.80 and by its Resolution dated 23/6/1976 the Municipal Council had decided to initiate prosecution.

4. The defence of the accused in their statement under Section 313 of Cr.P.C. was that the trees had fallen due to heavy rain and wind and that they had relocated the trees with the permission of the Municipal authority. In support of this defence they had relied upon the documents at Exhs.83 and 83A. Section 221 of the Trees Act lays down that whoever fells any trees or causes any tree to be felled in

contravention of the Act or without reasonable excuse fails to comply with any order issued or condition imposed by the Trees Officer shall on conviction be punished with fine which may extend to Rs.1000/- for each offence. The complaint was filed on 8/7/1997 with the allegation that on 24/12/1996 the accused persons were permitted to construct the house subject to certain conditions and on 5/6/1997 the Trees Officer had reported that the accused had uprooted three trees and five other trees were severely damaged by using gelatine.

5. During the course of the trial PW 2 who was a Photographer did not bring on record the negatives and there was no direct evidence apart from the report submitted by the PW 1 - complainant. In addition in the complaint itself it was stated that on 3/6/1997 the accused persons had uprooted the trees, whereas the panchanama dated 5/6/1997 was drawn, information was furnished by the accused persons to the Municipal Council that they were permitted to relocate some of the trees. For all these reasons, the trial court held that the Municipal Council could not prove beyond

reasonable doubt the charges against the accused and, therefore, they came to be acquitted.

6. The main ground recorded by the trial court that there was no direct evidence before the court to prove the allegation made by the Tree Officer and one set of circumstances was presented by the complainant where as the other set of defence was presented by the accused and in such a situation the benefit doubt goes to the accused.

7. This reasoning does not warrant any reconsideration at the hands of this court and hence leave to appeal is refused and the application is rejected.

(B.H. Marlapalle,J.)